

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

CEDRIC JEROME MCCULLUM

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:11-cv-69-HSO-JMR

MIKE BYRD

DEFENDANT

**ORDER ADOPTING REPORT AND RECOMMENDATIONS AND
DISMISSING PLAINTIFF'S COMPLAINT WITHOUT PREJUDICE**

This cause comes before the Court on the Report and Recommendations [19] of Chief United States Magistrate Judge John M. Roper, entered in this cause on February 23, 2012. Magistrate Judge Roper recommended that this case be dismissed without prejudice for Plaintiff's failure to prosecute. Report and Recommendations, at p. 3. To date, Plaintiff has not filed any objection to the Report and Recommendations.

Where no party has objected to a magistrate judge's report and recommendation, the Court need not conduct a *de novo* review of it. 28 U.S.C. § 636(b)(1) ("a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Plaintiff has been warned that his failure to advise the Court of a change of address would be deemed a purposeful delay and contumacious act, and may result in his case being dismissed. *See, e.g.*, Order [4], at p. 2. After Plaintiff failed to

respond to Defendant's Motion for Summary Judgment [13], the Magistrate Judge mailed an Order to Show Cause [18] to Plaintiff on January 19, 2012. The Order [18] warned Plaintiff that his "failure to timely comply with this, or any order from this Court, will be deemed as a purposeful delay and contumacious act by Plaintiff and may result in this cause being dismissed without prejudice and without further notice to Plaintiff." Order [18], at p. 3. Plaintiff's response to the Court's Order [18] was due on February 8, 2012. Plaintiff did not file a response.

The Magistrate Judge then entered his Report and Recommendations [19] on February 23, 2012, recommending that this case be dismissed without prejudice. The envelope [20] containing the Report and Recommendations [19] was returned. The Report and Recommendations [19] were then sent by the Clerk of Court to another address, and were marked delivered [21] on April 12, 2012. Plaintiff has not filed any objections to the Report and Recommendations. Indeed Plaintiff has not filed any documents in this case since his Response [12] to a previous Order to Show Cause [11] was docketed on August 24, 2011.

After review of the record, the Court, being fully advised in the premises, finds that the Report and Recommendations are neither clearly erroneous nor contrary to law, and should be adopted as the opinion of this Court. Accordingly,

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendations [19] of Chief United States Magistrate Judge John M. Roper, entered in this cause on February 23, 2012, should be, and the same hereby are, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, this case is
DISMISSED WITHOUT PREJUDICE for failure to prosecute.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendant's
pending Motion for Summary Judgment [13] is denied as moot.

SO ORDERED AND ADJUDGED, this the 1st day of May, 2012.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE